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OFFICE OF THE SECRETARY

Lynn A. Stout
Professor of Law

September 3, 1999

Ms. Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Comments in Response to Public Notice DA 99-1647,
In The Matter of Request of Lockheed Martin Corporation et al.,
CC Docket 92-237
NSD File No. 98-151

Dear Ms. Salas:

Please find enclosed for filing in the above dockets an original and four copies of Comments in response to Public Notice DA 99-1647 issued August 17, 1999. Also enclosed is a list of those individuals at the Commission who were provided with a copy of the Comments.

Respectfully submitted,

Lynn A. Stout
Professor of Law

Enclosures

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List ABCDE

Comments of Lynn A. Stout
Professor of Law
Georgetown University Law Center

Before the Federal Communications Commission, Common Carrier Bureau
September 3, 1999

Re: Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co. (CC Docket No. 92-237, NSD File No. 98-151) (Response to Public Notice DA 99-1647, August 17, 1999).

Introduction

My name is Lynn A. Stout. I am a Professor of Law at the Georgetown University Law Center, where I teach securities regulation and corporate law (see attached *curriculum vitae*). I have been retained by Mitretek Systems to examine the August 16, 1999, Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Amended Request), and the August 26, 1999, Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Supplemental Amended Request). In particular, I have been asked to analyze the proposed corporate structure of NeuStar, Inc. (NeuStar), and especially whether the NeuStar board of directors and the trustees of the proposed NeuStar voting trust would be neutral and independent of Warburg Pincus & Co. and its affiliates (Warburg Pincus).

I conclude that neither the NeuStar board of directors nor the NeuStar voting trust would be neutral and independent of Warburg Pincus.

My analysis is based on the facts described in the Amended Request and attached Exhibits A and B, as modified by the Supplemental Amended Request and its attached Exhibit A. These documents describe the proposed restructuring of Lockheed Martin's Communications Industry Services (CIS), which currently serves as the North American Numbering Plan Administrator (NANPA) and the Local Number Portability Administrator (LNPA), into the new corporate entity NeuStar, Inc. A majority of the stock of NeuStar would be beneficially owned by Warburg, Pincus Equity Partners, L.P. ("WPEP") and controlled by a voting trust.

The Amended Request states that this proposed structure "would ensure the continued neutrality of CIS" and "eliminates any possibility that Warburg Pincus could use its ultimate ownership interest in the NANPA, through WPEP, to advantage other telecommunications investments" (Amended Request at pages 1-2). These conclusions are incorrect.

In order for NeuStar to be deemed independent of Warburg Pincus, at a minimum NeuStar would have to be structured so that an absolute majority of NeuStar's current board of directors, and an absolute majority of all successor NeuStar boards, would be independent. To be independent, it is not enough that such directors have no familial or business ties to Warburg Pincus. Warburg Pincus must also give up control over who serves as an independent director. This is difficult to arrange given that Warburg Pincus would own an absolute majority of NeuStar's voting shares. Although it is possible for Warburg Pincus to cede voting control over its shares to an independent voting trust, in order for the trust to be truly independent Warburg Pincus must again give up control over who serves as an independent trustee and how trustees are compensated. For reasons noted below, the proposed restructuring described in the Amended Request does not meet these standards, and none of the changes proposed in the Supplemental Amended Request remedy this fundamental flaw. Thus Warburg Pincus would continue to be able to influence and control both a majority of the voting shares of NeuStar, and a majority of the NeuStar board of directors. Moreover, even if this were not so, the directors and trustees would have no obligation under corporate and trust law to protect NeuStar's neutrality in numbering administration.

1. Warburg Pincus Can Control the NeuStar Shares Held in Trust.

The Amended Request and Supplemental Amended Request state that 59% of the shares of NeuStar would be controlled by an "independent" voting trust. However, the Trust Agreement described in the Amended Request and in Exhibit B does not create an independent trust.

In order for the trust to be independent from Warburg Pincus, two essential criteria must be met. First, after the initial trustees are appointed, Warburg Pincus must cede power to remove them or to determine their successors in the event of removal, resignation, expiration of term, or death. The proposed trust fails to meet this standard for at least three reasons: (a) a simple majority of the NeuStar board of directors can remove a trustee without cause and at any time, and Warburg Pincus can control the NeuStar board of directors (see Section II, below); (b) successor trustees are selected by the vote of a simple majority of the NeuStar board, and again Warburg Pincus can control the board; and (c) according to the Trust Agreement, no trustee can be selected without the approval of a representative of Warburg Pincus, giving Warburg Pincus veto power over the selection of trustees.

The second essential criterion that must be met for the trust to qualify as independent from Warburg Pincus is that Warburg Pincus must be unable to influence the level of compensation received by the trustees. The proposed trust does not meet this standard because the Trust Agreement is silent as to trustee compensation. Thus, the Trust Agreement does not preclude the NeuStar board of directors from determining whether and to what extent the trustees will be compensated. Because Warburg Pincus can control the NeuStar board, Warburg Pincus can control the trustees' compensation.

The trust described in the Amended Request and Supplemental Amended Request thus fails to meet either of the two fundamental requirements for independence from Warburg Pincus and its affiliates. Warburg Pincus can control both who serves as a trustee, and how much

compensation the trustees receive. The trustees accordingly are not independent of Warburg Pincus.

II. Warburg Pincus Can Control the NeuStar Board of Directors.

The Amended Request and Supplemental Request state that NeuStar would have a five-member board of directors, consisting of: NeuStar's Chief Executive Officer (CEO), who would serve as Chairman; up to two direct representatives of Warburg Pincus; and two "independent" directors.

This proposed structure allows Warburg Pincus to control the NeuStar board. In order to be independent of Warburg Pincus, the proposed board would have to be structured so that independent directors made up a clear majority — a minimum of three out of five — of both the initial board, and all successor boards. Moreover, directors are only independent of Warburg Pincus if Warburg Pincus cannot exercise control over their selection. The proposed board described in the Amended Request fails to meet these standards for a variety of reasons.

First, the Amended Request states that Warburg Pincus will have up to two direct representatives on the NeuStar board, and that no "independent" trustee or "independent" director can be elected without the approval of one of these representatives. This arrangement gives Warburg Pincus veto power over all board decisions regarding these fundamental matters.

Second, the Amended Request states that the CEO of NeuStar will serve as Chairman of the NeuStar board. There is no provision requiring the CEO/Chairman to be independent of Warburg Pincus. Indeed, the first proposed Chairman, Jeffrey Ganek, is a Warburg Pincus nominee. Thus Warburg Pincus would initially control a majority of the NeuStar board of directors. Although the Amended Request does not describe how future NeuStar CEOs will be selected, if NeuStar follows the standard practice of selecting officers by vote of a majority of the board, Warburg Pincus could perpetuate its control of a majority of the board.

Third, although the Amended Request states that the NeuStar board would include two "independent" directors, the facts given in the Amended Request and Supplemental Amended Request do not support that claim that these two directors would be independent. Most significantly, the independent directors could only be elected by a majority vote of the NeuStar board, including the affirmative vote of at least one Warburg Pincus representative. Thus (as in the case of the trustees), Warburg Pincus would exercise control over who serves as "independent" directors.

The net result is that Warburg Pincus could enjoy control and influence over a majority, and possibly all, of the members of the NeuStar board. The NeuStar board of directors accordingly would not be independent of Warburg Pincus.

III. Other Sources of Warburg Pincus Influence and Control over NeuStar

In addition to the factors noted above, the Amended Request describes a number of other characteristics of the proposed corporate restructuring that would contribute to Warburg Pincus' ability to influence and control NeuStar.

First, the initial "independent" members of the NeuStar board will be chosen by NeuStar's CEO and Chairman, Jeffrey Ganek. Mr. Ganek is a Warburg Pincus nominee.

Second, all successor "independent" directors must be nominated by the Chairman of the NeuStar Board, who again need not be independent.

Third, any NeuStar director, including any "independent" director, can be removed by the vote of three-quarters of NeuStar's shares including shares in the voting trust which Warburg Pincus can control (see Section I, above).

Fourth, the trustees of the proposed voting trust will not have control over the shares in the trust with regard to "fundamental" corporate changes such as mergers and consolidations, the issuance of new shares, significant acquisitions, and the incurring of material indebtedness.

Fifth, the Amended Request does not provide evidence that NeuStar's Articles of Incorporation, and/or corporate bylaws, cannot be amended to increase the size of the NeuStar board and so dilute the power of NeuStar's "independent" directors.

IV. Fiduciary Duties Do Not Require NeuStar's Directors and Trustees To Seek Neutrality in Numbering Administration

The discussion above focuses on whether the proposed corporate restructuring would effectively insulate NeuStar from the influence and control of Warburg Pincus. I conclude that it would not, and that fundamental aspects of NeuStar's proposed board of directors and voting trust preclude these entities from being deemed independent of Warburg Pincus. Even if this were not so, however, it is important to note that independent NeuStar directors and voting trustees would remain free to favor the economic interests of Warburg Pincus over the general public's interest in the neutrality of the NANPA.

The Amended Request suggests otherwise when it states that "the trustees will have a fiduciary duty to all the beneficiaries of the trust, so their only incentive is to ensure the ongoing success and neutrality of NeuStar." (Amended Request at 9). This statement is not correct. Under the terms of the proposed corporate restructuring and trust, NeuStar's directors and trustees do not owe fiduciary duties to the general public. Rather, they would owe fiduciary duties primarily to NeuStar's shareholders, including Warburg Pincus. NeuStar's directors and trustees accordingly would be under no obligation to ensure NeuStar's neutrality in numbering plan administration. Nor would the directors and trustees be precluded from favoring a particular beneficiary, such as Warburg Pincus, over other beneficiaries where this can be done without affirmatively harming the other beneficiaries.

Conclusion

For the reasons stated above I conclude that the proposed new corporate entity, NeuStar Inc., would not be independent from Warburg Pincus and its affiliates. To the contrary, Warburg Pincus would retain significant ability to influence and control NeuStar. Moreover, even if this were not so NeuStar could not be assumed to be neutral in numbering administration.

Respectfully submitted,



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PROFESSIONAL POSITIONS

Georgetown University Law Center, Washington, DC
Professor of Law, 1991 to present

Courses taught: corporate law; securities regulation; law and economics; international securities markets; finance theory and capital markets seminar; jurisprudence of law and economics seminar.

Recent administrative positions: Director, Georgetown-Sloan Project on Business Institutions (overseeing \$2.2 million grant from the Sloan Foundation for research into the economic and social functions of corporations); Faculty Appointments Committee (1998-99); Long Range Planning Committee (1997-99); Director, Working Paper Series on Business, Economics, and Regulation (1997-99); Faculty Advisor, Joint MBA-JD Program (1997-98).

Eaton Vance Mutual Funds, Boston, MA
Director/Trustee, 1998 to present

Independent trustee of fund family with approximately \$35 billion under management (position equivalent to director of a public corporation).

Harvard Law School, Cambridge, MA
Visiting Professor, Spring 2000

The Brookings Institution, Washington, DC
Guest Scholar, 1995

New York University Law School, New York, NY
Visiting Professor, Fall 1994

George Washington University National Law Center, Washington, DC
Professor of Law, 1986 to 1990 (tenured 1989)

Williams & Connolly, Washington, DC
Attorney, 1983 to 1986

U.S. District Court for the District of Columbia, Washington DC
Judicial Law Clerk to the Hon. Gerhard A. Gesell, 1982-1983

EDUCATION

Yale Law School, New Haven, CT
J.D., May 1982
Senior Editor, *Yale Law Journal*

Princeton University, Princeton, NJ
Master of Public Affairs, Woodrow Wilson School, May 1982
Woodrow Wilson Fellow

Princeton University, Princeton, NJ
A.B., May 1979
Summa cum laude, Phi Beta Kappa, Woodrow Wilson School Senior Thesis Prize, National Merit Scholar

PUBLICATIONS

Books

CASES AND MATERIALS ON LAW AND ECONOMICS (with David Barnes, West 1992)

Supplemental Series (all with David Barnes, 1992):

ECONOMICS OF CONSTITUTIONAL LAW AND PUBLIC CHOICE
ECONOMICS OF CONTRACT LAW
ECONOMIC ANALYSIS OF TORT LAW
ECONOMICS OF PROPERTY RIGHTS AND NUISANCE LAW
ECONOMIC FOUNDATIONS OF REGULATION AND ANTITRUST LAW

Articles

Introduction: Team Production in Business Organizations, __ Journal of Corporation Law __
(forthcoming 1999) (Symposium on Team Production in Business Organizations)

Why The Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives, 48 Duke Law Journal 701 (1999)

A Team Production Theory of Corporate Law, 85 Virginia Law Review 247 (1999) (with Margaret M. Blair)

How Efficient Markets Undervalue Stocks: CAPM and ECMH Under Conditions of Uncertainty and Disagreement, 19 Cardozo Law Review 475 (1997) (Symposium on the Essays of Warren Buffett)

Technology, Transactions Costs, and Investor Welfare: Is A Motley Fool Born Every Minute? 75 Washington University Law Quarterly (1997) (Symposium on Markets and Information Gathering In An Electronic Age: Securities Regulation in the 21st Century)

PUBLICATIONS, CONTINUED

Irrational Expectations, 3 Legal Theory 227 (1997) (Symposium on Rationality and Cognition)

Type I Error, Type II Error, and the Private Securities Litigation Reform Act, 38 Arizona Law Review 711 (1996) (Symposium on the Private Securities Litigation Reform Act of 1995)

Insurance or Gambling? Derivatives Trading In A World of Risk and Uncertainty, 1996 Brookings Review 39 (Winter)

Are Stock Markets Costly Casinos? Disagreement, Market Failure, and Securities Regulation, 81 Virginia Law Review 611 (1995)

Agreeing To Disagree Over Excessive Trading, 81 Virginia Law Review 751 (1995)

Betting The Bank: How Derivatives Trading Under Conditions of Uncertainty Can Increase Risks and Erode Returns in Financial Markets, 21 Journal Corporation Law 53 (1995) (Symposium on Derivative Securities)

Some Thoughts on Poverty and Failure in the Market for Human Capital, 81 Georgetown Law Journal 1947 (1993) (Symposium on Poverty Law and Policy)

Strict Scrutiny and Social Choice: An Economic Inquiry into Fundamental Rights and Suspect Classifications, 80 Georgetown Law Journal 1787 (1992) (Symposium on Positive Political Theory and Public Law)

Are Takeover Premiums Really Premiums? Market Price, Fair Value, and Corporate Law, 99 Yale Law Journal 1235 (1990)

The Unimportance of Being Efficient: An Economic Analysis of Stock Market Pricing and Securities Regulation, 87 Michigan Law Review 613 (1988)

Note, *The Case for Mandatory Separate Filing by Married Persons*, 91 Yale Law Journal 363 (1981)

RECENT SPEECHES, TESTIMONY, AND OTHER PUBLIC APPEARANCES

1999: Olin Conference on Evolution and Legal Theory, Georgetown University Law Center
Sloan Conference on Team Production, Georgetown University Law Center
Roundtable Conference on the Year 2000 Computer Problem, New York University
Stern School of Business
Guest Speaker, Fordham Law School
Annual Meeting of the Socioeconomics Section, Association of American Law Schools

- 1998: Testimony before the U.S. Senate Banking Committee, Subcommittee on Financial Services and Technology, on Disclosing Year 2000 Readiness
Guest Speaker, American University Law School
Sloan Conference on Corporate Governance, Columbia Law School
Annual Meeting of the American Association for Law and Economics
Business Associations Workshop, Association of American Law Schools
Annual Meeting of the Socioeconomics Section, Association of American Law Schools
- 1997: Guest Speaker, Northwestern University School of Law
Brookings Institution Conference on Human Capital and the Theory of the Firm
Testimony in SEC v. Seaboard Investment Advisers, Inc., U.S. District Court, E.D.Va.
Biannual Meeting of the Institute for Quantitative Research in Finance ("Q Group")
University of Iowa Law School Law and Economics Workshop
Olin Conference on International Economic Regulation, Georgetown University Law Center
Olin Conference on Markets and Information Gathering In An Electronic Age: Securities Regulation in the 21st Century, Washington University Law School
Guest Speaker, Cornell Law School
Annual Meeting of the Socioeconomics Section, Association of American Law Schools
- 1996: Annual Meeting of the Southern Economic Association
University of Michigan Law School Law and Economics Workshop
Olin Conference on Rationality and Cognition, Georgetown University Law Center
Symposium on the Essays of Warren Buffet, Cardozo Law School
- 1995: Conference on the Private Securities Litigation Reform Act, Arizona Law School
Toronto Law School Law and Economics Workshop
Harvard Law School Law and Economics Workshop
Testimony in U.S. v. Mitchell Hammer, U.S. District Court, S.D.Fla.
Guest Speaker, Vanderbilt Law School
Annual Meeting of the American Association for Law and Economics
Conference on Economic Analysis of International Law, George Mason School of Law
Annual Meeting of the Public Choice Society
Guest Speaker, University of San Diego Law School

PROFESSIONAL ASSOCIATIONS

ABA Committee on Federal Regulation of Securities
AALS Section on Law and Economics (Chair, 1994)
AALS Section on Business Associations (Executive Council, 1992-94 and 1997-99)
American Law and Economics Association
Public Choice Society
Bar of the District of Columbia
Bar of the Commonwealth of Virginia

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September I caused an electronic copy of the foregoing Comment to be filed using the Commission's Electronic Comment Filing System and additional copies to be served by delivery to the Commission's mail room to the following:

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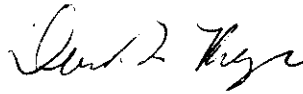
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A handwritten signature in black ink, appearing to read "Kyle Dixon".